

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**EARATON ADAMS, CHARLES )  
L. STILLS, III, ROBERT ADAMS, )  
MYRON BARNES, NELSON )  
BUMPERS, FREDERICK A. )  
CARTER, SR., SIDNEY HEDGEMAN, )  
TESHA HOLLIS, CARLOS JOHNSON,)  
LARRY J. LAFFIETTE, )  
RON LAW, JERMEL MATTHEWS, )  
JEROME PETTIBONE, RAHMAN )  
K. PRATT, NATHANIEL L. REED, )  
JERMAINE ROBERSON, )  
CAROLYN SLAY, CHARLES L. )  
STILLS, III, GLORIA SULLIVAN, )  
FRANKLIN THOMAS, GEORGE )  
WELLS, FREDERICK WILLIAMS, )  
BEVERLY THOMAS, ALVIN )  
CUNNINGHAM, individually )  
and on behalf of the class they seek )  
to represent, )**

**Plaintiffs,**

**v.**

**AUSTAL, U.S.A., L.L.C.,**

**Defendant.**

**CIVIL ACTION NO.:  
1:08-cv-155-KD-M**

**JURY DEMAND**

**THIRD AMENDED COMPLAINT**

**I. INTRODUCTION**

1. This is an action for legal and equitable relief to redress unlawful

discrimination and harassment on the basis of race, and retaliation against the Plaintiffs and the members of the class which they seek to represent. The suit is brought to seek a declaratory judgment that Defendant has engaged in a systemic pattern and practice of racial discrimination in employment opportunities and to secure the protection of and to redress the deprivation of rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981a (hereinafter “Title VII”); and 42 U.S.C. § 1981 (hereinafter “§ 1981”), which provide for relief against discrimination and harassment in employment on the basis of race and retaliation related thereto. Specifically, Plaintiffs allege that Defendant has subjected them and other African-American employees to a hostile work environment based on their race, African-American; discriminated against them and other African-American employees based on their race, African-American, in the terms and benefits of their employment including pay, promotion and discipline; and unlawfully retaliated against them once they opposed the racial harassment and discrimination. Plaintiff B. Thomas also asserts that she was subjected to unlawful sexual harassment, sexual discrimination and retaliation in relation thereto. Plaintiff A. Cunningham also asserts that Defendant perceived him to be disabled in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (“ADA”). The Plaintiffs seek a permanent injunction and other equitable relief

necessary to eliminate the effects of the Defendant's past and present racial discrimination and to prevent such discrimination from continuing to adversely affect their lives and careers, including, but not limited to, affirmative restructuring of the promotion selection procedures, training, pay and other terms and conditions of employment. Each Plaintiff seeks damages, back-pay and other equitable remedies necessary to make themselves and the members of the class which they seek to represent whole. The Plaintiffs seek compensatory and punitive damages, and request a trial by jury of all issues triable by a jury pursuant to 42 U.S.C § 1981a. Further, the Plaintiffs seek attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

## **II. JURISDICTION AND VENUE**

2. The unlawful employment practices alleged hereinbelow were committed by the Defendant within Mobile County, Alabama. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5.

3. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 1343(a)(4), and 42 U.S.C. § 2000e-5; and 42 U.S.C. §§ 12112, 12117(a) and 12203, which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(f)(1) and (3), Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981a and the "Civil Rights Act of 1866," as amended by § 101 of the "Civil Rights Act of 1991," and codified at 42

U.S.C. § 1981.

### **III. ADMINISTRATIVE PREREQUISITES**

4. Plaintiffs Earaton Adams and Charles L. Stills, III, pursue their claims against the Defendant only under 42 U.S.C. §1981, under which no jurisdictional prerequisites are mandated.

5. All other named Plaintiffs pursue claims against the Defendant under both Title VII and 42 U.S.C. §1981, and each has met all administrative conditions precedent for the filing of this case under Title VII. In addition, Plaintiff Alvin K. Cunningham pursues claims under the ADA, and he has met all administrative conditions precedent for filing of this case under the ADA. These Plaintiffs timely filed a charge of discrimination and each has obtained a Right-To-Sue Notice. These Plaintiffs have timely brought this action following the issuance of his and/or her Right-To-Sue Notice.

### **IV. PARTIES**

6. Plaintiff, Earaton Adams (“E. Adams” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

7. Plaintiff, Robert Adams (“R. Adams” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and

is a resident citizen of the State of Alabama.

8. Plaintiff, Myron Barnes (“Barnes” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

9. Plaintiff, Nelson Bumpers (“Bumpers” or “Plaintiff”), is an African- American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

10. Plaintiff, Frederick A. Carter, Sr. (“Carter” or “Plaintiff”), is an African- American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

11. Plaintiff, Alvin Cunningham (“Cunningham” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

12. Plaintiff, Sidney Hedgeman (“Hedgeman” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

13. Plaintiff, Tesha Hollis (“Hollis” or “Plaintiff”), is an African-American female citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

14. Plaintiff, Carlos Johnson (“Johnson” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

15. Plaintiff, Larry J. Laffiette (“Laffiette” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

16. Plaintiff, Ron Law (“Law” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

17. Plaintiff, Jermel Matthews (“Matthews” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

18. Plaintiff, Jerome Pettibone (“Pettibone” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

19. Plaintiff, Rahman K. Pratt (“Pratt” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

20. Plaintiff, Nathaniel Reed, Jr. (“Reed” or “Plaintiff”), is an African-

American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

21. Plaintiff, Jermaine Roberson (“Roberson” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

22. Plaintiff, Carolyn Slay (“Slay” or “Plaintiff”), is an African-American female citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

23. Plaintiff, Charles L. Stills, III (“Stills” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Florida.

24. Plaintiff, Gloria Sullivan (“Sullivan” or “Plaintiff”), is an African-American female citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

25. Plaintiff, Beverly Thomas (“B. Thomas” or “Plaintiff”), is an African-American female citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

26. Plaintiff, Franklin Thomas (“F. Thomas” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and

is a resident citizen of the State of Alabama.

27. Plaintiff, George Wells (“Wells” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

28. Plaintiff, Frederick Williams (“Williams” or “Plaintiff”), is an African-American male citizen of the United States over the age of nineteen (19) years and is a resident citizen of the State of Alabama.

29. Defendant, Austal, USA, LLC (“Austal” or “Defendant”), is an employer doing business in Mobile County, Alabama, and at all times relevant to this action, the defendant was the former employer and/or is the employer of the Plaintiffs within the meaning of 42 U.S.C. §1981 and of 42 U.S.C. § 2000e(a) and (b). At all times relevant to this action, the Plaintiffs were employees of Austal and were rightfully attempting to make and/or enforce the terms of contract(s) regarding their employment. At all times relevant to this action, Austal has employed at least fifteen (15) or more employees.

## **V. CLASS CERTIFICATION**

30. Racially discriminatory treatment is manifested by such policies and/or patterns or practices as denying African-American employees desirable job assignments, pay rates, promotional opportunities, training, and other benefits and



conditions of employment on the same terms applied to white employees. In particular, Defendant deters African-American employees from seeking promotions and desirable job assignments; fails to select and/or train African-Americans for desirable job assignments; fails to establish desirable pay rates for African-Americans; ignores, and in some cases actively supports, racist comments, racist jokes, and racist behavior among its staff; and fails to enforce policies prohibiting racial discrimination.

31. This action in part seeks to enjoin Defendant from pursuing specific illegal policies and/or practices that have injured and continue to injure Plaintiffs and other African-American employees in all aspects of Defendant's employment operations. Defendant has created and maintained a system-wide employment policy of race-based disparate treatment, which limits the employment opportunities for African-Americans in various aspects of Defendant's employment operation including, but not limited to job selections, pay rates, training, evaluations and adverse terms and conditions of employment.

32. Such illegal policies and practices are premised on an invidious and racially discriminatory animus directed against African-American people and are specifically calculated to deny members of the African-American race equal treatment and opportunities guaranteed by 42 U.S.C. §1981 and Title VII.

33. The Plaintiffs seek certification of a class of African-Americans adversely affected by the employment practices at Defendant's location in Mobile, Alabama.

**A. CLASS DEFINITION AND COMMON QUESTIONS OF LAW AND FACT**

34. The African-American named Plaintiffs are members of the class they seek to represent. That class consists of African-Americans who have been subject to one or more aspects of the systemic racial discrimination described in the class claims of this Second Amended Complaint which include 1) Defendant's selection and compensation procedures, 2) racially hostile reputation and working conditions, and 3) unequal terms and conditions of employment. The prosecution of the claims of the named Plaintiffs requires adjudication of the question common to the putative class: whether Defendant has engaged in systemic racial discrimination in its selection and compensation practices and the terms and conditions of work and employment in a manner made unlawful by the statutes under which this action is brought.

35. The claims of the named Plaintiffs are embedded in common questions of law and fact because Defendant has: 1) prevented African-Americans from learning about or competing for opportunities in jobs traditionally held by white

employees; 2) precluded or delayed their promotion into such jobs; 3) prevented African-Americans from receiving equal pay rates and pay increases; and 4) subjected African-American employees to adverse terms and conditions of employment.

### **B. TYPICALITY OF RELIEF SOUGHT**

36. The relief necessary to remedy the claims of the named Plaintiffs is the same as that necessary for the class. The named Plaintiffs seek the following relief for their individual claims and those of the class: 1) a declaratory judgment that the Defendant has engaged in systemic racial discrimination in limiting the employment opportunities of African-Americans to lower classifications and pay rates; 2) a permanent injunction against such continuing discrimination; 3) restructuring of said defendants' selection procedures so that African-Americans are able to learn about and fairly compete in the future for better classifications, compensation levels, and terms and conditions of employment traditionally enjoyed by white employees; 4) restructuring of said Defendants' workforce so that African-Americans are assigned to the classifications, locations and compensation levels they would have now hold in the absence of Defendant's past racial discrimination; 5) preventing the racially discriminatory and hostile working conditions for employees; and 6) damages, back pay and other equitable remedies necessary to make the named Plaintiffs and the class they seek to represent whole from Defendant's past discrimination.

**C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER**

37. The persons whom the named Plaintiffs seek to represent are too numerous to make joinder practicable. The proposed class consists of more than one hundred former, current, and future African-American employees who have been, are, or will be employed by Defendant at the facilities in the State of Alabama. Defendant's pattern and practice of racial discrimination also makes joinder impracticable by discouraging African-Americans from pursuing employment opportunities, thereby making it impractical and inefficient to identify many members of the class prior to determination of the merits of such Defendants' class-wide liability.

**D. ADEQUACY OF REPRESENTATION**

38. The named Plaintiffs interests are coextensive with those of the class in that each seeks to remedy Defendant's discriminatory employment practices so that racially hostile conditions of work will be eradicated and African-Americans will no longer be segregated in unequal positions and/or pay rates, and prevented from obtaining management and other more desirable positions. Such named Plaintiffs are able and willing to represent the class fairly and vigorously, as they pursue their common goals through this action. Plaintiffs' counsel are also qualified, experienced, and able to conduct the litigation and to meet the time and fiscal demands required

to litigate an employment discrimination class action of this size and complexity. The combined interest, experience and resources of the named Plaintiffs and their counsel to litigate competently the individual and class claims of race-based employment discrimination at issue, satisfy the adequacy of representation requirement of Federal Rule of Civil Procedure 23(a)(4).

#### **E. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS**

39. Certification of a class of similarly situated African-Americans is the most efficient and economical means of resolving the questions of law and fact that are common to the individual claims of the named Plaintiffs and the putative class. The claims of the named Plaintiffs require resolution of the common question of whether Defendant has engaged in a systemic pattern of racial discrimination against African-Americans. Such named Plaintiffs seek remedies to undo the adverse effects of such discrimination in their own lives, careers and working conditions and to prevent continued racial discrimination in the future. The named Plaintiffs have standing to seek such relief in part because of the adverse effect that racial discrimination against African-Americans has had on their own interest in working and living in conditions free from the pernicious effects of racial bias and hostility. In order to gain such relief for themselves, as well as for the putative class members, the named Plaintiffs must first establish the existence of systemic racial

discrimination as the premise of the relief they seek. Without class certification, the same evidence and issues would be subject to repeated re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the class of African-Americans affected by the common question of law and fact is the most efficient and judicious means of presenting the evidence and argument necessary to resolve such questions for the named plaintiffs, the putative class and the defendants. The named Plaintiffs' individual and class claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic disparate treatment claims of the type at issue in this Amended Complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

**F. CERTIFICATION IS SOUGHT PURSUANT TO FED.R.CIV.P. 23(b)**

40. Defendant has acted on grounds generally applicable to the class by adopting and following systemic practices and procedures which are racially discriminatory.

41. Defendant's racial discrimination is its standard operating procedure rather than a sporadic occurrence. Such Defendant has refused to act on grounds generally applicable to the class by refusing to adopt or follow promotion and pay procedures which do not have disparate impact or otherwise do not systemically

discriminate against African-Americans and by refusing to establish conditions of work that are not hostile to African-Americans. Defendant's systemic discrimination and refusal to act on grounds that are not racially discriminatory have made appropriate final injunctive relief and corresponding declaratory relief with respect to the putative class as a whole.

42. Injunctive and declaratory relief are the predominant relief sought because they are both the culmination of the proof of Defendant's individual and class-wide liability at the end of Stage I of a bifurcated trial and the essential predicate for the named Plaintiffs' and putative class members' entitlement to equitable remedies and legal relief at Stage II of such trial. Declaratory and injunctive relief flow directly and automatically from proof of the common question of law and fact regarding the existence of systemic racial discrimination against African-Americans. Such relief is the factual and legal predicate for the named Plaintiffs' and putative class members' entitlement to equitable remedies for individual losses caused by such systemic discrimination.

## **VI. STATEMENT OF FACTS AND CLAIMS**

### **GENERAL ALLEGATIONS**

43. The Named Plaintiffs are all employees and/or former employees of Austal.

44. Austal builds high speed aluminum ferries and other high speed aluminum vessels at its shipyard located in Mobile, Alabama.

45. During the Plaintiffs' employment with Austal, they witnessed and/or suffered discrimination based on their race, African-American.

46. Plaintiffs have been treated less favorably than white employees in the terms and conditions of their employment and employment rules and policies are applied differently to the Plaintiffs than as their white counterparts.

47. During the course of their employment, Plaintiffs' were denied proper training and have been given unwarranted counseling based on their race, African-American.

48. As a direct result of being denied training, Plaintiffs have also been denied promotional opportunities.

49. Throughout Plaintiffs' employment, Austal has had no African-American Supervisors and all of the upper management is Caucasian.

50. Austal does not post vacancy announcements for the positions of Supervisor or Lead Person. Austal has a practice and a custom of merely selecting less qualified Caucasian employees for these positions with no posting or application process. This custom and practice by Austal denies African-American employees the opportunities for promotions.



51. The Plaintiffs are given lower evaluations than similarly situated Caucasian employees, resulting in lower wage increases than the Caucasian employees, as pay increases are allegedly tied to employment evaluations.

52. The lower evaluations given to the African-American employees, including Plaintiffs, results in their receiving lower pay increases and hourly rates than less qualified Caucasian employees.

53. The starting pay of African-American employees, including Plaintiffs, is typically lower than less qualified Caucasian employees.

54. The Plaintiffs are paid less than similarly situated white employees for performing the same or similar work and the pay rates assigned to Plaintiffs are arbitrarily and discriminatorily made.

55. Plaintiffs have been denied promotions to positions which would have afforded them greater pay and prestige.

56. Plaintiffs have been subjected to racially discriminatory and hostile comments and conduct from Caucasian employees, Lead Persons and Supervisors.

57. Plaintiffs have complained about the racially discriminatory and hostile conduct, but no remedial actions have been taken by Austal to stop and/or prevent such conduct.

58. The racially discriminatory and hostile conduct is on going and of a

continuing nature, and it creates a racially hostile environment in which African-Americans, including the Plaintiffs, are forced to work.

59. Plaintiffs have been subjected to racial epithets being written and pictures being drawn on the bathroom walls and racial comments being made by Caucasian workers. The epithets and comments include, but are not limited to, the following statements and pictures: “How may niggers do you see around here wearing white hats”, “WHITE POWER” with a picture of a hooded Klansman; “fuck ALL NIGGERS”; “See, Niggers travel in packs just like monkeys”, “Why don’t Niggers use asprin? Because they don’t want to pick the cotton out of the top”, and drawings with stick figures representing African-American employees being hung from a noose. In addition, Caucasian employees use the “N” word and wear shirts displaying the Confederate flag, and Plaintiffs have found nooses in their work areas.

60. These racially derogatory comments, slurs, and pictures are severe and pervasive and have changed the terms and conditions of Plaintiffs’ employment and all of the Plaintiffs were subjected to such racially derogatory comments, slurs, and pictures.

61. Plaintiffs complained about the above racially hostile conduct to supervisors, but no action was taken by the Defendant to stop and/or prevent this improper conduct from recurring and it has continued.

62. After complaining about the racially discriminatory conduct and hostile environment, Plaintiffs have been retaliated against in the terms, and conditions of their employment.

63. Plaintiffs have been and will continue to be retaliated against in the terms, and conditions of their employment up-to and after the date of filing their Second Amended Complaint.

64. Plaintiffs are still subjected to a racially hostile work environment and are still discriminatorily prevented from attempting to advance within the company and are subject to unlawful retaliation.

**COUNT I**  
**TITLE VII VIOLATIONS**  
**RACIAL HARASSMENT, DISCRIMINATION & RETALIATION**

65. The Plaintiffs re-allege and incorporate by reference paragraphs 1 - 64 above with the same force and effects as if fully set out in specific detail hereinbelow.

66. The named Plaintiffs and putative class they seek to represent have been and continue to be discriminated against by Defendant in the terms, conditions and privileges of their employment through the creation and toleration of a racially charged and hostile work environment.

67. The named Plaintiffs and putative class they seek to represent have been

subject to a racially hostile work environment which has been authorized, ratified, encouraged and condoned by Austal.

68. This racially hostile environment includes, but is not limited to, racial slurs, racial jokes, racial harassment, racial stereotypes, and other disparate treatment by which African-American persons are treated as inferior, as set out in detail above and below.

69. The racially hostile environment changed, and continues to change, the terms and conditions of the employment of the Plaintiffs.

70. Supervisors and/or management officials at Austal participated in, were aware of, encouraged, and/or condoned the racially hostile work environment.

71. Austal failed to train its employees, including the named Plaintiffs and putative class they seek to represent on its purported anti-discrimination policy and reporting procedures.

72. The dissemination of any anti-discrimination policy and reporting procedures after the Plaintiffs filed their Equal Employment Opportunity Commission (“EEOC”) Charges of Discrimination against the Defendant have been ineffective, as the same discriminatory practices continue to occur and supervisory and/or management employees continue to participate in, are aware of, encourage, and/or condone the racially hostile work environment.

73. Austal, through its agents and employees, has a racial animus against African-Americans, including the named Plaintiffs and putative class they seek to represent.

74. The named Plaintiffs and putative class they seek to represent have been directly affected by the discriminatory practices described in this Complaint.

75. The systemic discrimination, as previously set forth, further adversely affects the named Plaintiffs' and putative class' they seek to represent status as employees by promoting and reinforcing racial stereotypes and racial bias in the workplace.

76. The Plaintiffs made good faith complaints in opposition to the racial discrimination and racial harassment to which they, and other African-American employees, were subjected.

77. As set out in detail above, in retaliation for the Plaintiffs' good faith opposition to racial harassment and racial discrimination, the Defendant has retaliated against the Plaintiffs and other African-American employees who have protested and/or complained about the racially discriminatory treatment.

78. The Defendant's conduct was retaliation based, at least in part, on the Plaintiffs' protected activities of opposing racial discrimination and harassment.

79. The unlawful actions of the Defendant, as set forth above, constitute a

practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

80. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiffs.

81. The Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the named Plaintiffs and putative class they seek to represent.

82. The Defendant failed to take any prompt and effective action reasonably calculated to result in the prevention of and/or remedy of the racial harassment, racial discrimination and/or retaliation of the named Plaintiffs and putative class they seek to represent.

83. The actions of Defendant, as set out herein, violate Title VII.

84. As a result of the actions of the Defendant, the Plaintiffs have been and continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering and monetary and economic losses.

**COUNT II**  
**42 U.S.C. § 1981 VIOLATIONS**  
**RACIAL HARASSMENT, DISCRIMINATION & RETALIATION**

85. The Plaintiffs re-allege and incorporate by reference paragraphs 1 - 84

above with the same force and effects as if fully set out in specific detail hereinbelow.

86. The named Plaintiffs and putative class they seek to represent have been and continue to be discriminated against by Defendant in the terms, conditions and privileges of their employment through the creation and toleration of a racially charged and hostile work environment.

87. The named Plaintiffs and putative class they seek to represent have been subject to a racially hostile work environment which has been authorized, ratified, encouraged and condoned by Austal.

88. This racially hostile environment includes, but is not limited to, racial slurs, racial jokes, racial harassment, racial stereotypes, and other disparate treatment by which African-American persons are treated as inferior, as set out in detail above and below.

89. The racially hostile environment changed, and continues to change, the terms and conditions of the employment of the named Plaintiffs and putative class they seek to represent.

90. Supervisors and/or management officials at Austal participated in, were aware of, encouraged, and/or condoned the racially hostile work environment.

91. Austal failed to train its employees, including the Plaintiffs on its purported anti-discrimination policy and reporting procedures.

92. The dissemination of any anti-discrimination policy and reporting procedures after the Plaintiffs filed their Equal Employment Opportunity Commission Charges of Discrimination against the Defendant have been ineffective, as the same discriminatory practices continue to occur and supervisory and/or management employees continue to participate in, are aware of, encourage, and/or condone the racially hostile work environment.

93. Austal, through its agents and employees, has a racial animus against African-Americans, including the Plaintiffs.

94. The named Plaintiffs and putative class they seek to represent have been directly affected by the discriminatory practices described in this Complaint.

95. The systemic discrimination, as previously set forth, further adversely affects the Plaintiffs' and other African-American employees' status as employees by promoting and reinforcing racial stereotypes and racial bias in the workplace.

96. The Plaintiffs made good faith complaints in opposition to the racial discrimination and racial harassment to which they, and other African-American employees, were subjected.

97. As set out in detail above, in retaliation for the Plaintiffs' good faith opposition to racial harassment and racial discrimination, the Defendant has retaliated against the Plaintiffs and other African-American employees who have protested



and/or complained about the racially discriminatory treatment.

98. The Defendant's conduct was retaliation based, at least in part, on the Plaintiffs' protected activities of opposing racial discrimination and harassment.

99. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

100. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the named Plaintiffs and putative class they seek to represent.

101. The Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the named Plaintiffs and putative class they seek to represent.

102. The Defendant failed to take any prompt and effective action reasonably calculated to result in the prevention of and/or remedy of the racial harassment, racial discrimination and/or retaliation of the named Plaintiffs and putative class they seek to represent.

103. The actions of Defendant, as set out herein, violate 42 U.S.C. §1981.

104. As a result of the actions of the Defendant, the Plaintiffs have been and

continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering and monetary and economic losses.

**COUNT III**  
**TITLE VII VIOLATIONS**  
**RACE - DISPARATE TREATMENT**

105. The Plaintiffs re-allege and incorporate by reference paragraphs 1 - 104 above with the same force and effects as if fully set out in specific detail hereinbelow.

106. The named Plaintiffs and putative class they seek to represent have been, and continue to be, discriminated against by the Defendant because of their race, African-American, in the terms of wages/compensation, promotions, job assignments, discipline, discharge (lay-offs and/or termination), and other terms, conditions, and privileges of their employment.

107. The Defendant has engaged in and continues to engage in a pattern and practice of discriminating against its African-American employees, including the Plaintiffs, with respect to wages/compensation, promotions, job assignments, discipline, discharge (lay-offs and/or termination), and other terms, and conditions, and privileges of their employment.

108. The selection procedures of the Defendant have and continue to have a disparate impact on African-American employees, including the Plaintiffs.

109. Jobs which could potentially result in promotions for the named

Plaintiffs and putative class they seek to represent are not posted and are instead given to Caucasian employees.

110. African-Americans employees, including Plaintiffs, are offered a lower salary than those offered to Caucasian employees for the same positions.

111. Individual Plaintiffs have been denied promotions for which they were qualified and in which they have expressed an interest, while the positions are instead given to Caucasian employees with lower qualifications and/or seniority. Plaintiffs have been denied these position because of their race, African-American, because Austal, through its agents and employees, has a racial animus against African-Americans.

112. The criteria utilized by the Defendant in making selection decisions for better and higher paying positions are discriminatory.

113. The Defendant has denied the named Plaintiffs and putative class they seek to represent opportunities to apply for and to be selected for better and higher-paying positions.

114. The named Plaintiffs and putative class they seek to represent have been, and continue to be, directly affected by the discriminatory practices described in this Complaint. These include being deprived of the opportunity of working in an environment free of racial discrimination and the opportunity to be supervised and

work with persons of their own race who would have been promoted in the absence of the alleged discrimination. Such discrimination also denies the named Plaintiffs and putative class they seek to represent the opportunity of working in a fully racially integrated work environment and otherwise adversely affects their opportunity for enjoyment to work.

115. The systemic discrimination set forth herein also further adversely affects the Plaintiffs' and other African-Americans' status as employees by promoting and reinforcing racial stereotypes and racial bias in the workplace.

116. In the absence of such racial discrimination, the named Plaintiffs and putative class they seek to represent would have a greater opportunity of both supervising and being supervised by persons of their same race, and having persons of their race integrated into the decision-making process as it relates to wages/compensation, promotions, job assignments, discipline, discharge, and other terms, conditions, and privileges of employment. By having members of their own race integrated into such processes, the named Plaintiffs' and other African-Americans employees' conditions in all of the foregoing respects would have been significantly improved and they would have been less likely to have been subjected to racial bias in such decisions to the same degree that they have been.

117. The Defendant's policy and practice of racial discrimination deprives

African-American employee, including Plaintiffs, of opportunities regarding wages/compensation, promotions, job assignments, discipline, discharge, and other terms, conditions, and privileges of employment.

118. Even in those instances in which they have not been personally deprived of promotions, wages/compensation, job assignments, and other terms and conditions of employment, their employment status has been adversely affected by similar discriminatory treatment of other African-American employees as set forth in this Complaint.

119. The Plaintiffs made good faith complaints in opposition to the racial discrimination to which they, and other African-American employees, were subjected.

120. As set out in detail above, in retaliation for the Plaintiffs' good faith opposition to racial harassment and racial discrimination, the Defendant has retaliated against the Plaintiffs and other African-American employees who have protested and/or complained about the racially discriminatory treatment.

121. The Defendant's conduct was retaliation based, at least in part, on the Plaintiffs' protected activities of opposing racial discrimination.

122. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial discrimination and/or retaliation in violation of its employees' federally protected

rights.

123. The Defendant knew, or should have known, of the racial discrimination and retaliation of the Plaintiffs.

124. The Defendant failed to take any prompt and effective action reasonably calculated to result in the prevention of and/or remedy of the racial discrimination and/or retaliation of the Plaintiffs.

125. The actions of the Defendant violate Title VII.

126. As a result of the actions of the defendant, the named Plaintiffs and putative class they seek to represent have been and continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering, and monetary and economic losses.

**COUNT IV**  
**42 U.S.C. § 1981 VIOLATIONS**  
**RACE - DISPARATE TREATMENT**

127. The Plaintiffs re-allege and incorporate by reference paragraphs 1 - 126 above with the same force and effects as if fully set out in specific detail hereinbelow.

128. The named Plaintiffs and putative class they seek to represent have been, and continue to be, discriminated against by the Defendant because of their race, African-American, in the terms of wages/compensation, promotions, job assignments, discipline, discharge (lay-offs and/or termination), and other terms,

conditions, and privileges of their employment.

129. The Defendant has engaged in and continues to engage in a pattern and practice of discriminating against its African-American employees, including the Plaintiffs, with respect to wages/compensation, promotions, job assignments, discipline, discharge (lay-offs and/or termination), and other terms, and conditions, and privileges of their employment.

130. The selection procedures of the Defendant have and continue to have a disparate impact on African-American employees, including the Plaintiffs.

131. Jobs which could potentially result in promotions for the named Plaintiffs and putative class they seek to represent are not posted and are instead given to Caucasian employees.

132. African-Americans employees, including Plaintiffs, are offered a lower salary than those offered to Caucasian employees for the same positions.

133. Individual Plaintiffs have been denied promotions for which they were qualified and in which they have expressed an interest, while the positions are instead given to Caucasian employees with lower qualifications and/or seniority. Plaintiffs have been denied these position because of their race, African-American, because Austal, through its agents and employees, has a racial animus against African-Americans.

134. The criteria utilized by the Defendant in making selection decisions for better and higher paying positions are discriminatory.

135. The Defendant has denied the named Plaintiffs and putative class they seek to represent opportunities to apply for and be selected for better and higher-paying positions.

136. The named Plaintiffs and putative class they seek to represent have been, and continue to be, directly affected by the discriminatory practices described in this Complaint. These include being deprived of the opportunity of working in an environment free of racial discrimination and the opportunity to be supervised and work with persons of their own race who would have been promoted in the absence of the alleged discrimination. Such discrimination also denies the named Plaintiffs and putative class they seek to represent the opportunity of working in a fully racially integrated work environment and otherwise adversely affects their opportunity for enjoyment to work.

137. The systemic discrimination set forth herein also further adversely affects the Plaintiffs' and other African-Americans' status as employees by promoting and reinforcing racial stereotypes and racial bias in the workplace.

138. In the absence of such racial discrimination, the named Plaintiffs and putative class they seek to represent would have a greater opportunity of both



supervising and being supervised by persons of their same race, and having persons of their race integrated into the decision-making process as it relates to wages/compensation, promotions, job assignments, discipline, discharge, and other terms, conditions, and privileges of employment. By having members of their own race integrated into such processes, the named Plaintiffs' and other African-Americans employees' conditions in all of the foregoing respects would have been significantly improved and they would have been less likely to have been subjected to racial bias in such decisions to the same degree that they have been.

139. The Defendant's policy and practice of racial discrimination deprives African-American employee, including Plaintiffs, of opportunities regarding wages/compensation, promotions, job assignments, discipline, discharge, and other terms, conditions, and privileges of employment.

140. Even in those instances in which they have not been personally deprived of promotions, wages/compensation, job assignments, and other terms and conditions of employment, their employment status has been adversely affected by similar discriminatory treatment of other African-American employees as set forth in this Complaint.

141. The Plaintiffs made good faith complaints in opposition to the racial discrimination to which they, and other African-American employees, were subjected.

142. As set out in detail above, in retaliation for the Plaintiffs' good faith opposition to racial harassment and racial discrimination, the Defendant has retaliated against the Plaintiffs and other African-American employees who have protested and/or complained about the racially discriminatory treatment.

143. The Defendant's conduct was retaliation based, at least in part, on the Plaintiffs' protected activities of opposing racial discrimination.

144. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial discrimination and/or retaliation in violation of its employees' federally protected rights.

145. The Defendant knew, or should have known, of the racial discrimination and retaliation of the named Plaintiffs and putative class they seek to represent.

146. The Defendant failed to take any prompt and effective action reasonably calculated to result in the prevention of and/or remedy of the racial discrimination and/or retaliation of the named Plaintiffs and putative class they seek to represent.

147. The actions of the defendant violate Title VII and § 1981.

148. As result of the actions of the defendant, the named Plaintiffs and putative class they seek to represent have been and continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering

and monetary and economic losses.

**COUNT V**  
**TITLE VII**  
**RACE - DISPARATE IMPACT**

149. The Plaintiffs re-allege and incorporate by reference paragraphs 1 - 148 above with the same force and effects as if fully set out in specific detail hereinbelow.

150. The named Plaintiffs and the class they seek to represent have been subject to systemic racial discrimination including, but not limited to, a pattern and practice of intentional discrimination and a battery of practices having unlawful disparate impact on their employment opportunities. Such racial discrimination includes a policy and practice of restricting African-Americans' employment opportunities to the lower classification and compensation levels. The systemic means of accomplishing such racial discrimination include, but are not limited to, Defendant's promotion selection and compensation procedures, racially hostile reputation and conditions of work, and unequal terms and conditions of employment.

151. Defendant's selection and compensation procedures incorporate the following racially discriminatory practices: 1) reliance upon subjective procedures and criteria which permit and encourage the incorporation of racial stereotypes and bias of such Defendant's predominantly white managerial staff; 2) refusal to establish or follow policies, procedures, or criteria that reduce or eliminate disparate impact

and/or intentional racial bias or stereotypes in such Defendant's' decision making process; 3) refusal to post or announce vacancies or employment opportunities in a manner that allows African-Americans to learn about such opportunities and compete for them before they are filled by white employees or applicants; 5) pre-selection of whites before vacancies or opportunities become known; and 7) discouragement of applications and expressions of interest by African-Americans through a reputation for racial bias, racially hostile conditions of work, and unequal terms and conditions of employment in such areas as compensation, work hours and position assignments.

152. Defendant's compensation and selections procedures have a disparate impact on the individual named Plaintiffs and the class they represent. Such procedures are not valid, job related or justified by business necessity. There are objective and structured selection procedures available to Defendant which have less disparate impact on African-Americans and equal or greater validity and job relatedness, but such Defendant has refused to consider or to use such procedures.

153. Defendant's compensation and selection procedures are intended to have a disparate impact on the named Plaintiffs and the class they seek to represent.

154. Defendant's compensation and selection procedures have adversely affected the named Plaintiffs and the class they seek to represent, including but not limited to, the following: not hiring or promoting African-Americans in the

traditionally white classification and compensation levels; assigning African-Americans to inferior job positions, pay rates, and other unequal terms and conditions of employment; and encouraging or ratifying racially hostile conditions of work and racially demeaning stereotypes regarding the capabilities, motivation and interests of African-Americans.

155. Defendant has also continuously engaged in, condoned and ratified discrimination which constitutes a continuing violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, et seq., as amended, and 42 U.S.C. §1981, as amended.

156. The named Plaintiffs have no plain, adequate, or complete remedy of law to redress the wrongs alleged herein, and this suit for back-pay, an injunction other equitable relief, and a declaratory judgment is their only means of securing adequate equitable relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from Defendant's unlawful policies and practices as set forth herein unless enjoined by this Court.

157. By reason of Defendant's discriminatory employment practices, the named Plaintiffs have experienced harm, including loss of compensation, back and front pay, and other employment benefits.

**COUNT VI**  
**CLAIMS FOR NOMINAL, COMPENSATORY AND PUNITIVE**

**DAMAGES PURSUANT TO 23(B)(3)**

158. The common issues of fact and law affecting the claims of the representative named Plaintiffs and proposed class members, including, but not limited to, the common issues identified in paragraphs 1-157 above, predominate over any issues affecting only individual claims.

159. A class action is superior to other available means for the fair and efficient adjudication of the claims of the named Plaintiffs and members of the proposed class.

160. The cost of proving Defendant's pattern or practice of discrimination makes it impracticable for the named Plaintiffs and members of the proposed class to prosecute their claims individually.

**COUNT VII**  
**42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF EARATON ADAMS**

161. Plaintiff Earaton Adams re-alleges and incorporate by reference paragraphs 1 -64; 85-104; 127-148; 158-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

162. Plaintiff E. Adams has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile

work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). E. Adams also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

163. E. Adams was hired to work for Austal on or about July 10, 2006, as a trade assistant for its Mobile, Alabama, location. He is presently employed there as a welder/fitter.

164. During his employment, E. Adams was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers, and heard Tim Clemons, a Supervisor and Coordinator, refer to African-American employees as “monkeys”; and hearing other Supervisors saying “I don’t know why they come to work here, they are not going anywhere in the company”, and “we need to leave them out because they don’t know anything once one of them gets in, it opens the door way for the rest of them,” while referring to African-American employees. E. Adams complained to supervisory personnel about

the racially derogatory comments.

165. E. Adams is aware of racially derogatory graffiti in the workplace and has seen such graffiti including pictures in the bathroom of a stick man hung by a noose, and the statements, “Any monkey can weld,” and “No Niggers.”

166. E. Adams complained to Supervisors about the racially derogatory graffiti.

167. E. Adams has also found a noose hanging in his work area. He complained to Supervisors about the noose in his work area.

168. E. Adams was offended by such racial comments and acts and they materially changed the terms and conditions of his employment. In addition, E. Adams was aware of racial comments and slurs that were constantly written on the bathroom walls.

169. E. Adams is aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to also wear shirts displaying the Confederate flag in the workplace.

170. E. Adams made many complaints to his Supervisors about the racially harassing behavior, but nothing was done to stop this improper conduct.

171. After complaining about the racially discriminatory conduct and epithets, E. Adams was retaliated against in the terms and conditions of his



employment.

172. E. Adams was paid less per hour than similarly situated Caucasian employees and when he complained to his Supervisor about the disparity in pay he was written up and disciplined.

171. E. Adams has also been denied a Supervisor position. He has been training Caucasian employees who are then being promoted over him to become his boss. E. Adams complained verbally to Andrew Carver and Scott Pearson about not being promoted, but nothing would happen.

172. The Defendant has continually placed E. Adams under different supervisors such that he cannot receive a permanent assignment, which is required in order to receive an assessment and wage increase. E. Adams complained to supervisory personnel about race discrimination, and specifically about not receiving a pay raise and being moved from crew to crew to crew and having no real job position or assignment.

173. After complaining about the noose in his work area, the Defendant has moved E. Adams from supervisor to supervisor and also took his lead position away from him. By moving him around so much, E. Adams is not getting assessed and thus not receiving any pay increases.

174. E. Adams was treated differently in the terms and conditions of his

employment and subjected to a hostile work environment because of his race, African-American.

175. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

176. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

177. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

178. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

179. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

180. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

181. The Defendant thus has violated the proscriptions against race

discrimination, racial harassment and retaliation under 42 U.S.C. § 1981.

182. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

183. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

184. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

185. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

186. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT VIII**  
**42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF CHARLES L. STILLS, III**

187. Plaintiff Charles L. Stills, III, re-alleges and incorporate by reference

paragraphs 1 - 64; 85-104; 127-148; 158-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

188. Plaintiff C. Stills, III has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). C. Stills, III also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

189. Stills was hired to work for Austal in December 2002 in the position of Warehouse Supervisor.

190. Stills remained employed with the Defendant until he was constructively discharged in March 2006.

191. During his employment, Stills was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made

to his black co-workers, and was subjected to racially hostile and discriminatory comments from white employees, lead persons and supervisors of the Defendant.

192. Stills has been subjected to racially derogatory graffiti and epithets in the workplace and to racial comments made by Caucasian employees.

193. Stills complained to Supervisors about the racially derogatory graffiti and comments, but no action was taken and the racially hostile environment continued.

194. Stills was offended by such racial comments and acts and they materially changed the terms and conditions of his employment.

195. Stills is also aware of Caucasian employees being allowed to use the word "Nigger" in the workplace and to also wear shirts displaying the Confederate flag in the workplace.

196. Stills made many complaints to his Supervisors about the racially harassing behavior, but nothing was done to stop this improper conduct. After complaining about the racially discriminatory conduct and epithets, Stills was retaliated against in the terms and conditions of his employment.

197. As part of his job, Still was made responsible for the restroom cleaning crews and thus was in charge of trying to clean up the racial graffiti and was exposed to same; however, as the Defendant took no actions to stop the graffiti, it continued

to reappear on a regular basis. Stills was also denied pay raises and necessary equipment to perform his job duties.

198. The racial discrimination and racially hostile and threatening environment culminated in Stills' constructive discharge. Stills was forced to resign his employment under circumstances under which a reasonable person would have felt compelled to resign.

199. Stills was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

200. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

201. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

202. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

203. The conduct of the Defendant was so severe or pervasive as to create a

racially hostile working environment for the Plaintiff.

204. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

205. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under 42 U.S.C. § 1981.

206. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

207. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

208. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

209. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an

injunction, and compensatory and punitive damages is his only means of securing adequate relief.

210. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT IX**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF MYRON BARNES**

211. Plaintiff Myron Barnes re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

212. Plaintiff M. Barnes has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). M. Barnes also relies on these acts, incidents and/or



episodes of the other named Plaintiffs and the putative class.

213. Barnes was hired to work for Austal on or about November 7, 2005, in the position of welder and is presently employed by the Defendant as a first class welder.

214. During his employment, Barnes was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his African-American co-workers including a comment by Jody Krause, Supervisor, asking “How do you like working for a guy who is black and ugly?” referring to Barnes. Barnes complained of such racially derogatory statements to Kevin Olds, of Human Resources, but his complaint was later “lost.”

215. Thereafter, Harley Combs, a white Supervisor/Boat Manager, told Barnes that he was not going to have anyone one on his crew “stirring up confusion in the fabrication department,” referring to Barnes’ complaints of racial discrimination and harassment by Jody Krause. Barnes was then demoted.

216. Barnes was offended by such racial comments and they materially changed the terms and conditions of his employment.

217. In addition, Barnes was aware of and has witnessed racially hostile comments and slurs that were constantly written on the bathroom walls, including a picture of Frank Thomas (African-American) with a hangman’s noose around his

neck, and statements including: “Fuck you Niggers”, “White Power,” and “Matt A. hates Niggers.”

218. He is aware of other comments and slurs that were written on the bathroom walls including, but not limited to, “KKK for every nigger”; “nigger babies are over populating kill them all”; rebel flags; pictures of KKK; and pictures of people being hung.

219. Barnes complained to Jerry McGainous, a white Supervisor, about the racial graffiti in the bathroom. McGainous said just try to look over it and ignore it and there was really nothing that they can do about it because it continues to appear daily even after being painted over.

220. Barnes also complained about the racial graffiti to Yancy Allen, a white Supervisor, and he also said to just ignore it, that it has always been there.

221. The racial graffiti continues to appear every couple of days; and if it is painted over or taken down, it just reappears.

222. Barnes is also aware of a picture of a hangman’s noose on the boat where everyone could see it.

223. Barnes has been discriminatorily denied a promotion to a lead man supervisor position. He has also been denied the \$2.00/hour step increase for the hours he has served as fill-in supervisor for Jody Krause.

224. Barnes complained to Tim Clements and Scott Drake about not receiving the pay increase due to his race, but nothing has been done.

225. Caucasian employees are given raises and promotions despite having less seniority or experience than Barnes and promotion opportunities are not posted, but simply given to Caucasian employees.

226. Barnes complained to Jason Clark about the racial discrimination when white employees who had not been there very long kept receiving promotions. Clark replied only that they don't want a complainer in a white hat, informing Barnes that he needed to stop complaining or he would lose his white hat position.

227. Barnes is also aware of Caucasian employees being allowed to use the word, "Nigger" in the workplace and to wear shirts displaying the Confederate flag in the workplace.

228. Barnes made many complaints to his supervisors about the racially hostile environment and discrimination, but nothing was done to stop the improper conduct.

229. After complaining about the racially discriminatory conduct and epithets, Barnes was retaliated against in the terms and conditions of his employment.

230. Barnes was treated differently in the terms and conditions of his employment, as delineated above and below. In addition to the allegations set forth

elsewhere in this Complaint, Barnes had been denied training while white co-workers are allowed to be trained.

231. Since Austal does not post available job positions, Barnes never knew when a position was available until it was already filled. For instance, Adam Blocker, a white shipfitter on his crew, was given a Leadman position in January 2007.

232. One day Adam Blocker came in with a white hat that stated "Stand In Supervisor" on it. Blocker stated that "Tim just made me Leadman and said you should have gotten it because you have been longer than I have." Barnes has never seen postings for supervisor positions.

233. African-American employees are paid less than less qualified Caucasian employees with less experience. Austal promises to pay \$20.00 per hour for first class tradesmen. Barnes is a first class welder, but does not receive \$20.00 per hour. He complained to his supervisor and received a raise to \$17.50.

234. However, Travis Baldwin, a white male, came to work for Austal and was placed on Barnes' crew and received \$18.00 per hour, despite having no experience and having only been with Austal for 3 months. Barnes, on the other hand, and been with Austal for over a year, is a certified welder and has previous experience, yet was paid less.

235. Barnes is treated differently in the terms and conditions of his

employment and subjected to a hostile work environment because of his race, African-American.

236. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

237. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

238. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

239. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

240. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

241. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

242. The Defendant thus has violated the proscriptions against race

discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

243. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

244. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

245. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

246. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

247. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT X**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF NELSON BUMPERS**

248. Plaintiff Nelson Bumpers re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

249. Plaintiff N. Bumpers has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). N. Bumpers also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

250. Bumpers began to work for Austal on or about November 13, 2000, in the job position of shipfitter/welder, which he held until he was terminated on or about June 20, 2006.

251. During his employment, Bumpers was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments

made to his African-American co-workers, including hearing the Supervisor, Joe, refer to African-Americans as “blue gums.”

252. Bumpers was offended by such racial comments and they materially changed the terms and conditions of his employment.

253. In addition, Bumpers was aware of racial comments and slurs that were constantly written on the bathroom walls the entire five and a half years that he was employed with Austal.

254. He was also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

255. Bumpers complained to Joe and Ricky, both Supervisors, about the racial graffiti but it continued to appear in the workplace.

256. Bumpers made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

257. After complaining about the racially discriminatory conduct and epithets, Bumpers was retaliated against in the terms and conditions of his employment.

258. Bumpers has been denied training for supervisor and lead man positions, while Caucasian employees are provided with such training.



259. Bumpers has been denied promotions to the positions of lead man or supervisor, and these positions were instead given to Caucasian employees with less experience and or qualifications than the Plaintiff.

260. Bumpers has been treated differently from white workers in the terms and conditions of his employment, and subjected to hostile work environment because of his race, African-American.

261. On June 20, 2006, Bumpers was terminated due to his race, African-American, and in retaliation for his good faith complaints about the racial discrimination and harassment.

262. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

263. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

264. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

265. The conduct of the Defendant was so severe or pervasive as to create a

racially hostile working environment for the Plaintiff.

266. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

267. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

268. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

269. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

270. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

271. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

272. Plaintiff has no plain, adequate or complete remedy at law to redress the

wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

273. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XI**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF FREDERICK A. CARTER, SR.**

274. Plaintiff Frederick A. Carter re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

275. Plaintiff F. Carter, Jr. has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536

U.S. 101, 115-118 (2002). F. Carter, Jr. also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

276. Carter was hired to work for Austal on or about January 2002, as a warehouse clerk and is still presently employed with the Defendant as a shipping/receiving supervisor.

277. During his employment, Carter was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers including hearing an employee say to Roy Hall over the company hand-held radios, "...all these monkeys...", referring to African-American employees.

278. Carter was offended by such racial comments and they materially changed the terms and conditions of his employment.

279. In addition, Carter was aware of racial comments and slurs that were constantly written on the bathroom walls, including: : "Let's hang all the niggers," "Black people are stupid," "Too many niggers in the warehouse," "Too many monkeys out here," "Hang all the monkeys," and "Why is Austal hiring all the niggers?".

280. Carter is also aware of a hangman's noose being found in the warehouse in October or November 2007.

281. He is aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

282. In addition, in June 2005, Carter was informed by Doug that Randy Walker had asked Doug, “How did he like working with two niggers in the warehouse?”, referring to Carter and Charles Still. Carter confronted Walker about the racist statement and Walker only replied that he wasn’t talking to him.

283. Carter made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

284. After complaining about the racially discriminatory conduct and epithets, Carter was retaliated against in the terms and conditions of his employment.

285. Throughout Carter’s employment, Austal has never posted job positions that were available with the company and instead has had a practice and custom of selecting less qualified Caucasian employees for these positions with no posting or application process.

286. While Charles Still was on active military duty, Carter was in charge of the warehouse until Wilbur Lee (white) was brought in as a Warehouse Coordinator, a newly created position. Lee had no warehouse experience and Carter had to train Lee for this position and Carter essentially did all of the job functions of the new

position without being paid or recognized for it.

287. Carter was never offered the position of Warehouse Coordinator, nor was he ever made aware that the position was available.

288. Harry Parker (white) is the Warehouse Supervisor and earns \$34,000 per year. Carter was initially offered this position, but only at a lower salary. Carter asked to received the same salary as Parker, \$34,000 per year, but the Defendant refused.

289. Instead, Austal brought in Henry Parker (white) and paid him a salary of \$34,000 per year and Carter had to train Parker for the job.

290. Carter complained to Scott Reese about Parker's receiving the amount of salary that he had requested and that this pay discrepancy was based on his race. Reese said there was nothing he could do about it.

291. Carter has been treated differently in the terms and conditions of his employment, as delineated below and above. In addition to the above, during his employment, Carter was told that if he wanted to advance and change departments he would have to take a pay cut. However, white employees Chris Knight, Rachel Sullivan, Nathaniel Freeman, and Derrick Harvard all changed departments without taking pay cuts.

292. Carter is treated differently in the terms and conditions of his

employment and subjected to a hostile work environment because of his race, African-American.

293. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

294. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

295. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

296. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

297. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

298. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

299. The Defendant thus has violated the proscriptions against race

discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

300. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

301. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

302. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

303. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

304. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF SIDNEY HEDGEMAN**



305. Plaintiff Sidney Hedgeman re-allege and incorporate by reference paragraphs 1-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

306. Plaintiff S. Hedgeman has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). S. Hedgeman also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

307. Hedgeman was hired to work for Austal on or about January 2, 2006, in the position of HVAC/Insulator in the HVAC Department and he remains employed with the Defendant.

308. During his employment, Hedgeman was subjected to a racially hostile

work environment, as delineated above and below. He was aware of racial comments made to his African-American co-workers, including, but not limited to: hearing his white co-worker talking to his foreman, Terry Crawley, and stating “That he was tired of working with niggers”; and being called a monkey by his supervisor, James Sullivan.

309. Hedgeman was offended by such racial comments and they materially changed the terms and conditions of his employment.

310. In addition, Hedgeman was aware of racial comments and slurs that were constantly written on the bathroom walls, including but not limited to: “Nigger go home.”and “Nigger this is a place for you to be.”

311. He was also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

312. Hedgeman made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop the improper conduct.

313. After complaining about the racially discriminatory conduct and epithets, Hedgeman was retaliated against in the terms and conditions of his employment.

314. Hedgeman was denied proper training due to his race, African-

American.

315. Hedgeman learned about training opportunities at Austal through other co-workers and in February 2007, Hedgeman asked his supervisor, Lance Lemcool, to be trained as a welding supervisor. His supervisor denied him the training.

316. A few months later, his supervisor promised to provide him training for a leadership position, but that never happened.

317. Again, Hedgeman tried to get training as an engineer, but he was denied.

318. As a result of being denied training, Hedgeman was denied promotional opportunities. Hedgeman was denied these training opportunities throughout his employment with Austal.

319. Yet, a similarly situated white co-worker was provided welding training within only five weeks of being employed with Austal.

320. In September 2007, the Defendant tried to make Hedgeman sign a paper stating that he resigned; however he refused.

321. Hedgeman was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

322. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

323. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

324. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

325. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

326. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

327. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

328. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

329. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment,

humiliation, inconvenience, and mental distress.

330. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

331. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

332. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

333. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XIII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF TESHA HOLLIS**

334. Plaintiff Tesha Hollis re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

335. Plaintiff T. Hollis has not only been subjected to individualized acts,

incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). T. Hollis also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

336. Hollis began work with Austal on or about June 5, 2006, in the position of Trades Assistant.

337. During her employment, Hollis was subjected to a racially hostile work environment, as delineated above and below. She was aware of racial comments made to her black co-workers.

338. Hollis was offended by such racial comments and they materially changed the terms and conditions of his employment.

339. In addition, Hollis was aware of racial comments and slurs that were constantly written on the bathroom walls.

340. She was also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

341. Hollis made complaints to her supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

342. After complaining about the racially discriminatory conduct and epithets, Hollis was retaliated against in the terms and conditions of her employment.

343. Hollis has been treated differently from white co-workers in the terms and conditions of her employment, as delineated above and below. In addition, Hollis was told after her 90 day probationary period that she would get a raise. She did not receive the raise, despite the fact that she was certified as a B-class welder before her 90 day probationary period expired.

344. Hollis is now making \$12.00 per hour. However, her similarly situated white co-workers received a two dollar raise and they are not certified and white employees Jon-Erik Reeves, Charles Villagram, and Joseph Adams, are all making 15.00 to 16.00 dollars per hour.

345. Hollis is discriminatorily subjected to disciplinary actions. She missed work due to the flu and then returned to work with a doctor’s excuse. Her supervisor wrote her up.

346. However, Jason Gordon, a white co-worker, missed days from work, and he was not written up, nor did anyone ask for an excuse.

347. Hollis was treated differently in the terms and conditions of her employment and subjected to a hostile work environment because of her race, African-American.

348. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of her employment.

349. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against her.

350. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

351. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

352. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

353. The Defendant failed to take any prompt and/or effective action



reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

354. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

355. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due her. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

356. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

357. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

358. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is her only means of securing adequate relief.

359. Plaintiff is suffering and will continue to suffer irreparable injury from

the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XIV**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF CARLOS JOHNSON**

360. Plaintiff Carlos Johnson re-re-alleges and incorporates by reference paragraphs 1-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

361. Plaintiff C. Johnson has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). C. Johnson also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

362. Johnson was hired by Austal USA on or about May 22, 2006 as a Lead Person and remains employed by Defendant.

363. Plaintiff has been treated less favorably than white employees in the terms and conditions of his employment and employment rules and policies are applied differently to the Plaintiff than his white counterparts.

364. During the course of his employment, Plaintiff was denied proper training and has been given unwarranted counseling based on his race, African-American.

365. As a direct result of being denied training, Plaintiff has also been denied promotional opportunities.

366. Throughout the named Plaintiffs' employment, Austal has had no African-American Supervisors and all of the upper management is Caucasian.

367. Austal does not post vacancy announcements for the positions of Supervisor or Lead Person. Austal has a practice and a custom of merely selecting less qualified Caucasian employees for these positions with no posting or application process. This custom and practice by Austal denies African-American employees the opportunities for promotions.

368. Plaintiff is given lower evaluations than similarly situated Caucasian employees, resulting in lower wage increases than the Caucasian employees, as pay increases are allegedly tied to employment evaluations.

369. The lower evaluations given to the African-American employees, including Plaintiff, results in receiving lower pay increases and hourly rates than less qualified Caucasian employees.

370. The starting pay of African-American employees, including Plaintiff, is typically lower than less qualified Caucasian employees.

371. Plaintiff is paid less than similarly situated white employees for performing the same or similar work and the pay rates assigned to Plaintiff is arbitrarily and discriminatorily made.

372. Plaintiff has been denied promotions to positions which would have afforded him greater pay and prestige.

373. Plaintiff has been subjected to racially discriminatory and hostile comments and conduct from Caucasian employees, Lead Persons and Supervisors.

374. Plaintiff has complained about the racially discriminatory and hostile conduct, but no remedial actions have been taken by Austal to stop and/or prevent such conduct.

375. The racially discriminatory and hostile conduct is on-going and of a continuing nature, and it creates a racially hostile environment in which African-Americans, including the Plaintiff, are forced to work.

376. Plaintiff has been subjected to racial epithets being written and

pictures being drawn on the bathroom walls and racial comments being made by Caucasian workers. The epithets and comments include, but are not limited to, the following statements and pictures: “How may niggers do you see around here wearing white hats”, “WHITE POWER” with a picture of a hooded Klansman; “fuck ALL NIGGERS”; “See, Niggers travel in packs just like monkeys”, “Why don’t Niggers use asprin? Because they don’t want to pick the cotton out of the top”, and drawings with stick figures representing African-American employees being hung from a noose. In addition, Caucasian employees use the “N” word and wear shirts displaying the Confederate flag, and Plaintiffs have found nooses in their work areas.

377. These racially derogatory comments, slurs, and pictures are severe and pervasive and have changed the terms and conditions of Plaintiffs’ employment and all of the Plaintiffs were subjected to such racially derogatory comments, slurs, and pictures.

378. Plaintiff complained about the above racially hostile conduct to supervisors, but no action was taken by the Defendant to stop and/or prevent this improper conduct from recurring and it has continued.

379. After complaining about the racially discriminatory conduct and hostile environment, Plaintiff has been retaliated against in the terms, and conditions of his employment.

380. Plaintiff is still subjected to a racially hostile work environment and are still discriminatorily prevented from attempting to advance within the company and are subject to unlawful retaliation.

381. Plaintiff has been subjected to the same denial of training and promotions. After complaining about the racially discriminatory conduct and epithets, Plaintiff was discriminated against because of his race, African-American, and because of retaliation in the terms and conditions of his employment including being removed from his “acting set-up supervisor” status. He lost this position on Friday, May 2, 2008, while sitting in on a department meeting discussing the events from the previous day, where a noose was discovered hanging in the break room of Defendant’s plant. In addition, management for Austal USA has publicly accused the named Plaintiffs in the above styled matter of placing the noose in the break room. Soon after he was removed from this position, Plaintiff discovered that a less experienced white employee, Everett Mallen, whom Johnson was responsible for training was promoted to the position of “set-up” supervisor over Johnson. Johnson was told that Everett received the promotion because of his 15+ years of experience in this field, yet Plaintiff was not only the current acting “set-up” supervisor at the time Everett was hired by Defendant but Plaintiff was responsible for training Everett Mallen.

382. Johnson is continuing to be retaliated against upon the belief that Austal USA is attempting to cover-up Johnson's status as a supervisor in order to deny him his earned wages from the time he was working as a "set-up" supervisor.

**COUNT XV**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF LARRY LAFFIETTE**

383. Plaintiff Larry Laffiette re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

384. Plaintiff L. Laffiette has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). L. Laffiette also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

385. Laffiette was hired to work for Austal on or about January 30, 2006, in the position of Apprentice and remains employed with the Defendant.

386. During his employment, Laffiette was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers.

387. Laffiette was offended by such racial comments and they materially changed the terms and conditions of his employment.

388. In addition, Laffiette was aware of racial comments and slurs that were constantly written on the bathroom walls.

389. He was also aware of Caucasian employees being allowed to use the word "Nigger" in the workplace and to wear shirts displaying the Confederate flag in the workplace.

390. Laffiette made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

391. After complaining about the racially discriminatory conduct and epithets, Laffiette was retaliated against in the terms and conditions of his employment.

392. Laffiette was treated differently from white co-workers in the terms and conditions of his employment, as delineated above and below. In addition to the



above, Laffiette has been denied training that was offered to his white co-worker.

393. Laffiette asked his supervisor, Chris Roberson, to be trained in welding. He was denied and the training went to Brad, his white co-worker. The training would have allowed Laffiette to better his skills and afforded him more promotional opportunities.

394. It took over a year and a half before Laffiette was given the training which he requested. In contrast, Brad (white) was given the training immediately upon request.

395. While an apprentice, Laffiette was also paid less per hour than similarly situated white employees.

396. Laffiette was denied a promotion to a lead man position. Instead, the position was given to Kenneth Payne (white), who had only been with the Defendant for approximately four months.

397. Laffiette was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

398. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

399. As set out in detail above, in retaliation for the Plaintiff's good faith

opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

400. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

401. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

402. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

403. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

404. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

405. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

406. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

407. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

408. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

409. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XVI**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF RON LAW**

410. Plaintiff Ron Law re-alleges and incorporates by reference paragraphs 1-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

411. Plaintiff R. Law has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus

condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). R. Law also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

412. Law was hired to work for Austal on or about October 31, 2005, in the position of Fitter and remains employed by the defendant.

413. During his employment, Law was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers. These epithets and comments are on going and of a continuing nature.

414. Law was offended by such racial comments and they materially changed the terms and conditions of his employment.

415. In addition, Law was aware of racial comments and slurs that were constantly written on the bathroom walls.

416. He was aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace. These epithets and comments are on going and of a continuing nature.

417. Law made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

418. After complaining about the racially discriminatory conduct and epithets, Law was retaliated against in the terms and conditions of his employment.

419. Law has also been treated differently than similar situated white co-workers in the terms and conditions of his employment, as delineated above and below.

420. In addition to the above, Law was denied the opportunity to complete an “A” class welding apprentice class. No valid reason was given for this denial.

421. Law complained about being denied training and his supervisor told him that he would check into it. However, when a white man was hired, his supervisor sent him to a welding class within the first two weeks of being employed with Austal.

422. When Law was hired, he was told that after the 90 day probationary period was over that he would be evaluated.

423. Law was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race,

African-American.

424. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

425. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

426. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

427. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

428. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

429. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

430. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. §

1981.

431. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

432. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

433. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

434. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

435. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XVII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF JERMEL MATTHEWS**

436. Plaintiff Jermel Matthews re-alleges and incorporates by reference

paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

437. Plaintiff J. Matthews Plaintiff has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). J. Matthews also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

438. Matthews was hired to work for Austal on or about December 6, 2004, in the position of shipfitter and is presently employed with the Defendant as a welder.

439. During his employment, Matthews was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers.

440. Mathews was offended by such racial comments and they materially



changed the terms and conditions of his employment.

441. In addition, Matthews was aware of racial comments and slurs that were constantly written on the bathroom walls. He has seen such racial graffiti including, but not limited to, the following statements: “Don’t feed the monkeys”, “There will never be a black white hat”, “Nigger don’t take aspirin because they are scared to pick the cotton out of the bottle”, and “Niggers want more than they deserve.” Matthews has seen such racial graffiti on a regular basis at least 2-3 times per week during his employment with the Defendant.

442. He is also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

443. Matthews is also aware of white employees making monkey noises at him during work and that this racially derogatory treatment was reported to management.

444. Matthews made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

445. After complaining about the racially discriminatory conduct and epithets, Matthews was retaliated against in the terms and conditions of his employment.

446. During his employment, Matthews has been denied training in blue print reading and attendance of a Class A welding class. The ability to read blue prints is necessary for employees to be promoted into supervisory positions; however the Defendant will not provide Matthews with this training despite his repeated requests for same.

447. White employees with less seniority than Matthews are provided with the blue print reading training and are then presented with promotional opportunities that are denied Matthews.

448. Matthews has also been treated differently from similarly situated white co-workers in the terms and conditions of his employment, as delineated above and below.

449. In addition to the allegations made elsewhere in this Complaint, Matthews had rules applied discriminatorily against him. For example, Chris Robinson, his supervisor, wrote him up for clocking in at 6:00 a.m., (5:57 a.m.); however when a similarly situated white co-worker was late and missed days from work, Robinson did not write up the white employee.

450. Matthews was written up for alleged lack of production when he was talking to the scaffold person about work. However, similarly situated white employees are allowed to talk to each other and are not written-up.

451. Additionally, Robinson never wrote up employee Jeremy Guy (white) for making out with his girlfriend in the hole of the boat.

452. Matthews worked for his supervisor for two (2) years and did whatever was asked of him, yet his Supervisor told Matthews not to ask for a raise in pay. However, employee Mike Sweat (white) began working for Austal making lower than Matthews and then in less than four months Sweat was given pay increases such that he made more than Matthews.

453. Within three months of his hire, Matthews became an A class welder, however the Defendant only pays him as a B class welder. Similarly situated white employees are paid more than Matthews for performing the same or similar work.

454. White employees are hired in making more money than Matthews for performing same or similar work.

455. Matthews has complained to his supervisor about the disparate pay, but nothing was done in response to his complaints.

456. Matthews was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

457. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

458. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

459. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

460. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

461. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

462. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

463. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

464. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment,

humiliation, inconvenience, and mental distress.

465. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

466. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

467. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

468. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XVIII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF JEROME PETTIBONE**

469. Plaintiff Jerome Pettibone re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

470. Plaintiff J. Pettibone has not only been subjected to individualized acts,

incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). J. Pettibone also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

471. Pettibone was hired to work for Austal on or about January 9, 2006, in the position of welder and he remains employed with the Defendant.

472. During his employment, Pettibone was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers, including but not limited to being called “nigger” and racially derogatory references to the “Zulu Nation.”

473. Pettibone was offended by such racial comments and they materially changed the terms and conditions of his employment.

474. In addition, Pettibone was aware of racial comments and slurs that were

constantly written on the bathroom walls. He has seen such racial graffiti including, but not limited to pictures of a noose and the statements: “How do you stop 10 niggers from raping a white woman - roll them a basketball”; “How do you keep a nigger out of your back yard - hang one in the front”; “how many niggers do you see with a white hat”; and “See how niggers travel in packs like rats.”

475. Pettibone complained to Jeremy Gainer and Scott Drake about the graffiti and showed Drake the noose picture on the wall. Pettibone also complained to Yancey Allen about the racial graffiti. Nothing was done, and the racial slurs and graffiti continue.

476. He is also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

477. Pettibone made many complaints to his supervisor of the racially hostile environment, but nothing was done to stop this improper conduct.

478. After complaining about the racially discriminatory conduct and epithets, Pettibone was retaliated against in the terms and conditions of his employment. Pettibone has continued to experience retaliation on the part of Defendant by being demoted to lower job assignments.

479. J. Pettibone as well as other named plaintiffs witnessed the noose

hanging in the Austal break room on Thursday, May 21, 2008 and since such time has not only had his picture taken by Austal management, alleging that he was responsible for the placing of the noose in the break room and the pictures were being taken to compare with a video recording Austal has to prove his guilt, but he has been approached by a Caucasian employee of Austal, in the presence of an Austal supervisor, bribing him to accept half of a \$20,000.00 (Twenty-Thousand Dollars and zero cents) bribe in return for accepting guilt for the noose being placed in the Austal break room as well as quitting his employment at Austal USA. In addition, after refusing to accept such bribe, Pettibone has continued to be retaliated against through accusations of guilt for placing the noose in the Austal break room, not limited to the threat of an individualized FBI investigation into the alleged wrongdoing.

480. Pettibone was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

481. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

482. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.



483. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

484. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

485. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

486. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

487. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

488. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

489. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

490. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

491. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

492. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XIX**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF RAHMAN K. PRATT**

493. Plaintiff Rahman K. Pratt re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

494. Plaintiff R. Pratt has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant

through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). R. Pratt also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

495. Pratt was hired to work for Austal on or about April 24, 2006, in the position of shipfitter.

496. Pratt is no longer employed with the Defendant as he was constructively discharged in November 2006.

497. During his employment, Pratt was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers.

498. Pratt was offended by such racial comments and they materially changed the terms and conditions of his employment.

499. In addition, Pratt was aware of racial comments and slurs that were constantly written on the bathroom walls.

500. Pratt reported the racial graffiti to his Supervisor, Chris Robinson

(white), but Robinson only replied that the graffiti had been going on since he got there and that they cannot do anything about it.

501. Pratt also complained to Supervisor Scott Peterson (white) about the racial graffiti who also replied only that the graffiti had been going on the entire time that Peterson had been working there and that it was not going to stop now.

502. Pratt, along with other employees, also complained at Thursday meetings about the racial graffiti. He was told that all he could expect was for it to be painted over.

503. He is also aware of Caucasian employees being allowed to use the word "Nigger" in the workplace and to wear shirts displaying the Confederate flag in the workplace.

504. Pratt made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

505. After complaining about the racially discriminatory conduct and epithets, Pratt was retaliated against in the terms and conditions of his employment.

506. During his employment, Pratt has been denied training in blue print reading and attendance of a Class B welding class. No valid reason was given for the denial of this training. However, similarly situated white employees with less seniority than Pratt were allowed to go through training.

507. In addition, in June, Pratt was told that he was on a waiting list for training with fifty people in front of him. In August, Pratt questioned his supervisor, Chris Robinson, about the training list and was informed that he was next in line for training. But Robinson then sent two Caucasian employees, A.J. Bodiford and Brad Chun, to the welding class in October and November and another white employee, Casey Starling, was sent to welding training after only one or two months of employment with the Defendant.

508. Pratt was again denied the welding training he requested and which was required for advancement in the company.

509. Pratt complained to Robinson that he was being denied the welding training because of his race, African-American, but no remedial actions were taken and Pratt continued to be denied training for his job.

510. In November 2006 Pratt was constructively discharged as he could no longer tolerate the racially hostile and threatening environment to which he was subjected and the racial disparity to which he was subjected.

511. Pratt resigned his employment with the Defendant under circumstances under which a reasonable person would have felt compelled to resign.

512. Pratt was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race,

African-American.

513. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

514. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

515. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

516. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

517. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

518. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

519. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. §

1981.

520. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

521. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

522. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

523. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

524. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XX**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF NATHANIEL REED, JR.**

525. Plaintiff Nathaniel Reed, Jr., re-alleges and incorporates by reference

paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

526. Plaintiff N. Reed, Jr. has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). N. Reed, Jr. also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

527. Reed was hired to work for Austal on or about November 28, 2004, in the position of fabricator.

528. Reed is no longer employed with the Defendant.

529. During his employment, Reed was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers and heard white employees refer to black employees as “boy.”



530. Reed was offended by such racial comments and they materially changed the terms and conditions of his employment.

531. In addition, Reed was aware of racial comments and slurs that were constantly written on the bathroom walls. He saw racial graffiti including, but not limited to, the statements: “How do you get a nigger not to go to work? ...Put food stamps in their work boots.”

532. Reed saw racial graffiti on the bathroom wall almost everyday.

533. Reed made verbal complaints to Robert Hall (white) about the racial graffiti. Hall’s response was to tell Reed, “there is nothing we can do about it.”

534. He is also aware of Caucasian employees being allowed to use the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

535. Reed made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

536. After complaining about the racially discriminatory conduct and epithets, Reed was retaliated against in the terms and conditions of his employment.

537. During his employment, Reed continuously asked for training and was continually denied attendance of a Class A welding class. Yet, similarly situated white co-workers are allowed to attend the training class.

538. Reed asked Tim Clemons (white) to be sent to the Class A welding class and Clemons denied the request.

539. Reed then complained to Clemons that he was being held back because he is black. No remedial action was taken in response to this complaint.

540. Reed was assigned first class work, yet was only paid for second class work.

541. Yet, similarly situated white employees continually made a higher hourly wages than Reed for similar work performed.

542. Reed was promised he would receive a raise when the Defendant received a particular government contract. However, once the contract was in place he never received the raise. Similarly situated white employees received raises.

543. Reed complained about not receiving a raise while white employees had their wages increased.

544. Reed was switched from supervisor to supervisor, and he complained to each of them about his disparate pay rate, but nothing was done about his complaints.

545. After Reed complained of the race disparity in his wages and raises, he was written up and subjected to unwarranted discipline.

546. Reed continued to be paid less than similarly situated white employees

with less seniority or experience than Reed.

547. Reed was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

548. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

549. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

550. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

551. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

552. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

553. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial

harassment, racial discrimination and/or retaliation of the Plaintiff.

554. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

555. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

556. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

557. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

558. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

559. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXI**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF JERMAINE ROBERSON**

560. Plaintiff Jermaine Roberson re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

561. Plaintiff J. Roberson has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). J. Roberson also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

562. Roberson was hired to work for Austal on or about July 5, 2006, in the job position of Fitter - Training Assistant.

563. Roberson is no longer employed with the Defendant as he was

terminated on or about March 10, 2008.

564. During his employment, Roberson was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to him and his black co-workers, including a comment made by a white supervisor, Michael Waters, to another white supervisor, Chad Guyatt, stating “Things get done when you have enough slave labor” referring to Roberson and two other black co-workers. Roberson complained to his supervisors about this racially offensive statement.

565. Roberson was offended by such racial comments and they materially changed the terms and conditions of his employment.

566. In addition, Roberson was aware of racial comments and slurs that were constantly written on the bathroom walls. Some of the racial comments and slurs that Roberson saw written on the bathroom walls included, “Niggers need to go back to the motherland”, “Austal got some fine nigger bitches in here”, “How do you starve a nigger, by taking his food stamp card and his work boots”, “We appreciate our slaves here at Austal”, “How is it going in those section eight houses, you niggers”, “We gone kill all niggers at Fri at 2:30”, “Fire all niggers”, “I hate all niggers”, and a picture of a black man with a penis in his mouth with the words “big black dumb ass nigger” written beside the picture.

567. Roberson reported the racial graffiti to Supervisors, including Chris Moyle, Terri Lindley, and Stephanie Pate, but nothing has been done by Defendant to stop the racial graffiti.

568. Roberson, along with other employees, also complained about the racial graffiti at morning safety meetings. When a black co-worker, Robert Young, complained about the racial graffiti to one of the white supervisors, Mitch Wescovich, at one of the safety meeting in January, Wescovich informed Young that if he spent less time in the restroom, he wouldn't do so much reading of the graffiti on the bathroom walls.

569. The racial graffiti continues to appear every couple of days; and if it was removed, it just reappears.

570. In December 2007, Roberson found a stick figure made out of tie-wrap with the word "nigger" written across it with a noose made from welding wire around its neck. Roberson complained about the noose and stick figure to his supervisor and gave the stick figure to his supervisor.

571. As a result of finding this racially offensive stick figure, Roberson asked to be transferred to another crew, but Defendant refused to transfer him. Instead, Defendant moved Roberson to another job position with the electricians, which was position was not within his training or skills.

572. Roberson has been discriminatorily denied training, pay increases and a promotion. Less qualified white employees were provided with training, pay increases, and promotions. After Roberson was certified in welding in July 2006, he was denied his own welding machine and promotion. White employees with less experience were given welding machine, including Ty Chris, Jeremy Butts, and Scott Stuart. Roberson complained to his supervisors about this discriminatory treatment, but nothing was done by Defendant.

573. Roberson was also paid less than white employees with less experience and qualifications and he was not given pay increases comparable to the white employees. Roberson had previously worked in the shipyard industry and he was not given credit for the prior experience when Defendant established his rate of pay, or job assignments.

574. Roberson complained to his supervisors, including Chris Moyle, Kevin Lewis, and Ron Moore, about the discriminatory treatment regarding his pay and training, but nothing was done.

575. Caucasian employees are given raises and promotions despite having less seniority or experience than Roberson and promotion opportunities are not posted, but simply given to Caucasian employees.

576. Roberson is also aware of Caucasian employees being allowed to use



the word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

577. Roberson made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

578. After complaining about the racially discriminatory conduct and epithets, Roberson was retaliated against in the terms and conditions of his employment.

579. During his employment, Roberson has been kicked by his supervisor, Tim Clements, he had been denied blue print training, he has been moved from one crew to another in order to prevent him from receiving training and evaluations, and he has been denied pay increases. No valid reasons have been given by Defendant for these actions. However, similarly situated white employees with less seniority than Roberson were allowed to go through training and received pay increases.

580. In or about September 2006, Roberson was denied blue print training which would have allowed him to receive higher evaluations and pay increases.

581. Roberson complained that he was being denied the training because of his race, African-American, but no remedial actions were taken and Roberson to be denied training for his job.

582. In March 2008, Roberson was constructively discharged as he could

no longer tolerate the racially hostile and threatening environment to which he was subjected and the racial disparity to which he was subjected.

583. Roberson resigned his employment with the Defendant under circumstances under which a reasonable person would have felt compelled to resign.

584. Roberson was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

585. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

586. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

587. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

588. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

589. Defendant knew, or should have known, of the racial discrimination,

racial harassment and retaliation of the Plaintiff.

590. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

591. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

592. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

593. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

594. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

595. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing

adequate relief.

596. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF CAROLYN SLAY**

597. Plaintiff Carolyn Slay re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

598. Plaintiff C. Slay has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). C. Slay also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

599. Slay was hired to work for Austal on or about November 1, 2004, in the position of welder and she remains employed with the Defendant in that position.

600. During her employment, Slay subjected to a racially hostile work environment, as delineated above and below. She was aware of racial comments made to her black co-workers.

601. Slay offended by such racial comments and they materially changed the terms and conditions of her employment.

602. In addition, Slay was aware of racial comments and slurs that were constantly written on the bathroom walls. She has seen a racially derogatory display at the workplace in which a black tie wrap had been shaped into a man with a white cloth wrapped around it and "Nigger" written on both sides and was then hanging from a frame in block 2 of the ship from a piece of wire shaped like a rope around it's neck.

603. Supervisors were made aware of this racially derogatory and threatening hanging man display.

604. Slay has made verbal complaints to supervisors about racial graffiti.

605. She is also aware of Caucasian employees being allowed to use the word "Nigger" in the workplace and to wear shirts displaying the Confederate flag in the workplace.

606. Slay made many complaints to her supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

607. Slay has repeatedly complained to multiple supervisors about being discriminatorily denied raises and promotions, while similarly situated white employees received pay increases and promotions.

608. After complaining about the racially discriminatory conduct and epithets, Slay was retaliated against in the terms and conditions of her employment including being terminated.

609. During her employment, Slay has been denied training for transportation certification. No valid reason was given for the denial and similarly situated white employees are provided with the training.

610. Slay has since had her need for training listed as an area of concern in her performance evaluation; yet she still is not allowed to be trained.

611. Slay was treated differently in the terms and conditions of her employment and subjected to a hostile work environment because of her race, African-American.

612. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of her employment.

613. As set out in detail above, in retaliation for the Plaintiff's good faith

opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against her.

614. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

615. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

616. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

617. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

618. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

619. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due her. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

620. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

621. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

622. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is her only means of securing adequate relief.

623. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXIII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**ROBERT ADAMS**

624. Plaintiff Robert Adams re-alleges and incorporates by reference paragraphs 1 -160 above with the same force and effect as if fully set out in specific detail hereinbelow.

625. Plaintiff R. Adams has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus



condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). R. Adams also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

626. R. Adams was hired to work for Austal on or about June 12, 2006, as a HVAC Technician for its Mobile, Alabama, location and is still presently employed by the Defendant.

627. During his employment, R. Adams was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his African-American co-workers.

628. R. Adams was offended by such racially hostile comments and they materially changed the terms and conditions of his employment.

629. In addition, R. Adams was aware of racial comments and slurs that were constantly written on the bathroom walls.

630. He is also aware of Caucasian employees being allowed to use word “Nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

631. R. Adams made many complaints to his Supervisor about the racial harassment, but nothing was done to stop this improper conduct.

632. After complaining about the racially discriminatory conduct and epithets, R. Adams was retaliated against in the terms and conditions of his employment.

633. R. Adams is paid less hourly wages than similarly situated Caucasian employees who are performing same or similar work.

634. R. Adams has asked to receive equal pay from the Defendant, but to date no changes in pay have been made.

635. R. Adams was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

636. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

637. As set out in detail above, in retaliation for the Plaintiff’s good faith opposition to racial harassment and racial discrimination, the Defendant took adverse

employment actions against him.

638. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

639. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

640. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

641. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

642. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

643. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

644. The Defendant engaged in the practices complained of herein with

malice and/or with reckless indifference to the Plaintiff's federally protected rights.

645. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

646. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

647. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXIV**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF GLORIA SULLIVAN**

648. Plaintiff Gloria Sullivan re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

649. Plaintiff G. Sullivan has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant

through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). G. Sullivan also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

650. Sullivan was hired to work for Austal on or about September 15, 2003, in the position of Warehouse Assistant and she remains employed with the Defendant in Shipping and Receiving.

651. During her employment, Sullivan was subjected to a racially hostile work environment, as delineated above and below. She was aware of racial comments made to his black co-workers.

652. Sullivan was offended by such racial comments and they materially changed the terms and conditions of her employment.

653. In addition, Sullivan was aware of racial comments and slurs that were constantly written on the bathroom walls and of nooses and racially derogatory pictures in the workplace.

654. She is also aware of Caucasian employees being allowed to use the

word “nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

655. Sullivan made many complaints to her supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

656. After complaining about the racially discriminatory conduct and epithets, Sullivan was retaliated against in the terms and conditions of her employment.

657. Throughout her employment, Sullivan was never provided proper training, yet similarly situated white employees have been provided training by the Defendant.

658. During Sullivan’s employment, Austal has never posted supervisor positions that have been available for the warehouse and Sullivan would only find out about an available supervisor position after it had been filled, so that she was prevented from applying for such positions.

659. Sullivan denied three promotions from 2004-2006 and all three positions were giving to white males: Jerrod Bradford, Wilbur Lee, and Thomas Bishop.

660. In 2007, a Coordinator position was filled twice, both time with white men, yet the position was never posted.

661. Sullivan has complained to her supervisors about the discriminatory promotion and selection procedures of the Defendant, but no changes have been made.

662. Sullivan was treated differently in the terms and conditions of her employment and subjected to a hostile work environment because of her race, African-American.

663. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of her employment.

664. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against her.

665. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

666. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

667. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

668. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

669. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

670. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due her. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

671. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

672. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

673. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is her only means of securing adequate relief.



674. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXV**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF FRANKLIN THOMAS**

675. Plaintiff Franklin Thomas re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

676. Plaintiff F. Thomas has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). F. Thomas also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

677. F. Thomas was hired to work for Austal on or about October 22, 2003,

in the position of maintenance electrician and remains employed with the Defendant.

678. During his employment, F. Thomas was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers and heard a scaffolding supervisor say over the radio to Roy Hall “tell one of your monkeys to come over and move this equipment for me,” referring to Hall’s African-American employees.

679. F. Thomas was offended by such racial comments and they materially changed the terms and conditions of his employment.

680. In addition, F. Thomas was aware of racial comments and slurs that were constantly written on the bathroom walls including seeing such racially derogatory and threatening graffiti as: “KKK rules”; “Blacks belong in the cotton fields”; “Niggers are hired from the neck down not to think”; “too many niggas in the warehouse”; “blacks should go back to their motherland in Africa”; and a hangman’s noose drawn on the restroom stalls.

681. He made verbal complaints to Wilbur Lee about the racial graffiti in the bathrooms and the only thing that happened was the walls were painted and the graffiti reappeared. Lee responded only that there is nothing he can do to stop it.

682. F. Thomas made verbal and written complaints about the racism and discrimination to supervisors and in a company questionnaire.

683. No remedial action has been taken and the racially hostile environment continues.

684. He is also aware of Caucasian employees being allowed to use the word “nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

685. F. Thomas was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

686. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

687. As set out in detail above, in retaliation for the Plaintiff’s good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

688. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees’ federally protected rights.

689. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

690. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

691. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

692. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

693. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

694. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

695. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

696. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an

injunction, and compensatory and punitive damages is his only means of securing adequate relief.

697. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXVI**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF GEORGE WELLS**

698. Plaintiff George Wells re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

699. Plaintiff G. Wells has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the "totality of the circumstances" of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. "A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility." *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). G. Wells also relies on these acts, incidents and/or

episodes of the other named Plaintiffs and the putative class.

700. Wells was employed at Austal in or about August 2005, in the position of ship fitter and he remains employed with the Defendant in that position.

701. During his employment, Wells was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers, and has heard white employee refer to black employees as, “those niggers.”

702. Wells was offended by such racial comments and they materially changed the terms and conditions of his employment.

703. In addition, Wells was aware of racial comments and slurs that were constantly written on the bathroom walls.

704. He is also aware of Caucasian employees being allowed to use the word “nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

705. Other comments include, but are not limited to,” I wish you niggers will go back to Africa”, a picture for a flag with the letter KKK, “All niggers are lazy”, a picture of a hangman noose, and don’t feed the monkeys. Wells also overheard someone refer to black employees as “black niggers.”

706. He has also seen “Monkeys go home” written on the boat.

707. Wells made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

708. After complaining about the racially discriminatory conduct and epithets, Wells was retaliated against in the terms and conditions of his employment.

709. Wells was denied proper training throughout his employment with Austal and only learned about training opportunities at Austal by hearing about white co-workers who received training.

710. Wells asked his supervisor, Joe Stevenson, to be trained for Class B certification; however two white employees, A.J. and Anthony, obtained the training before Wells.

711. Wells has also been denied blue print reading training that was given to white employees.

712. Wells was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

713. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

714. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse

employment actions against him.

715. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

716. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

717. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

718. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

719. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

720. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

721. The Defendant engaged in the practices complained of herein with



malice and/or with reckless indifference to the Plaintiff's federally protected rights.

722. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

723. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

724. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXVII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF FREDERICK WILLIAMS**

725. Plaintiff Frederick Williams re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

726. Plaintiff F. Williams has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile

work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). F. Williams also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

727. Williams was hired to work for Austal on or about January 9, 2006, in the job position of welder.

728. Williams is no longer employed with the Defendant as he was constructively discharged.

729. During his employment, Williams was subjected to a racially hostile work environment, as delineated above and below. He was aware of and also heard racial comments that were made to his black co-workers.

730. Williams was offended by such racial comments and they materially changed the terms and conditions of his employment.

731. In addition, Williams was aware of racial comments and slurs that were constantly written on the bathroom walls.

732. He is also aware of Caucasian employees being allowed to use the word “nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

733. Williams made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

734. After complaining about the racially discriminatory conduct and epithets, Williams was retaliated against in the terms and conditions of his employment.

735. Throughout William’s employment, Austal has never posted job positions that were available with the company.

736. Austal has a practice and custom of merely selecting employees for open positions by tapping less qualified Caucasian employees on the shoulder and telling them they have the position.

737. For instance Williams asked his supervisor, Chris Roberson, to be considered for the position of leadman, or fill-in supervisor.

738. During the time that the leadman position was vacant, Williams took on the roles and responsibilities of the position at the request of his supervisor..

739. Williams was denied the promotion and the leadman position was given instead to William Weaver (white).

740. Williams and Weaver had the same supervisor, worked the same job, and were in the same department. Williams had been working on the crew for 11 months, while Weaver had only been on the crew for 3 months. However, a white male received the promotion.

741. Williams repeatedly complained about the racial harassment and racial discrimination to which he was subjected, yet no responsive actions were taken and the racially hostile environment continued.

742. Supervisors began to subject Williams to discipline and to get aggressive with Williams when he complained about the racially hostile environment, and he was cursed at and treated in a threatening manner.

743. The racial discrimination and racially hostile and threatening environment culminated in Williams' constructive discharge.

744. Williams resigned his employment under circumstances under which a reasonable person would have felt compelled to resign.

745. Williams was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American.

746. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

747. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

748. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

749. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

750. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

751. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

752. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981.

753. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment,

humiliation, inconvenience, and mental distress.

754. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

755. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

756. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

757. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXVIII**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS**  
**PLAINTIFF BEVERLY THOMAS**

758. Plaintiff Beverly Thomas re-alleges and incorporates by reference paragraphs 1-160 above with the same force and effect as if fully set out in specific detail hereinbelow.

759. Plaintiff B. Thomas has not only been subjected to individualized acts,

incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). B. Thomas also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

760. B. Thomas was hired to work for Austal on or about February 28, 2005, in the position of Aluminum Fitter and she remains employed with the Defendant.

761. During her employment, B. Thomas was subjected to a racially hostile work environment, as delineated above and below. She heard and was aware of racial comments made to her black co-workers.

762. B. Thomas was offended by such racial comments and they materially changed the terms and conditions of her employment.

763. In addition, B. Thomas was aware of racial comments and slurs that

were constantly written on the bathroom walls.

764. She is also aware of Caucasian employees being allowed to use the word “nigger” in the workplace and to wear shirts displaying the Confederate flag in the workplace.

765. Other comment include, but are not limited to, “Those niggers always into something.”

766. B. Thomas has also been called a “stupid bitch,” and subjected to other sexually discriminatory comments.

767. B. Thomas saw racial graffiti and was aware of other racial graffiti in the workplace, including seeing writing on a spray bottle that said “this shit kills niggers”; seeing nooses hanging in the workplace and writing on the walls stating, “don’t feed the monkeys.”

768. B. Thomas complained to Harley Combs, Chris Robinson, Ron Moore, and Andrew Carver about these racially derogatory and threatening slurs and incidents. Nothing was done and the racial harassment continues.

769. B. Thomas made many complaints to her supervisor about the racially and sexually hostile environment, but nothing was done to stop this improper conduct

770. After complaining about the racially and sexually discriminatory conduct, graffiti and epithets, B. Thomas was retaliated against in the terms and



conditions of her employment, including having her supervisory “fill-in” status taken away. Furthermore, Defendant has continued to retaliate against B. Thomas by refusing to provide her any compensation despite the recommendation of her doctor, a doctor chosen by Austal USA, to take time off from work to recover from the emotional harm caused by the incident of seeing the noose hanging from the break room on May 21, 2008, as well as other racial and sexual harassment experienced on a continued and repeated basis by B. Thomas and other African-American employees of Defendant.

771. B. Thomas and other named plaintiffs witnessed the noose hanging in the Austal break room on May 21, 2008 for over an hour and a half before security removed it.

772. Thomas has been subjected to further retaliation by Austal USA through allegations of alleged time theft. In addition, Thomas has been threatened with arrest by Austal USA management in connection with the alleged time theft.

773. Furthermore, despite numerous attempts by Thomas, she has continued to be retaliated against by being denied any of her wages Austal USA withheld, although properly due to her, after these allegations of time theft were determined to be completely unwarranted.

774. B. Thomas was denied proper training throughout her employment with

Austal and only learned about training opportunities at Austal by seeing her white co-workers go through training.

775. On several occasions, B. Thomas asked to be trained, but her requests were denied. However, her similarly situated white co-workers were provided the training.

776. On several occasions, B. Thomas asked her supervisor, Chris Robinson, to be trained in welding, but she was not allowed to be trained. Instead, Brice Gordon, William Weaver, and other white co-workers, were provided with the training.

777. Throughout B. Thomas' employment, Austal had no African-American Supervisors.

778. Austal had a practice and custom of selecting less qualified Caucasian employees for the supervisor position.

779. B. Thomas observed Caucasian employees receiving supervisory positions within only weeks or months of being employed while she and other African-American employees were denied promotional opportunities.

780. In August 2006, B. Thomas asked to be trained as a supervisor, but her request was denied. Instead, Brice Gordon, a Caucasian employee, was trained to be supervisor.

781. B. Thomas complained about the discriminatory promotion of Gordon to the supervisory position, but no remedial action was taken.

782. B. Thomas overheard Scott Pearson (white) state that this job “isn’t for a woman.”

783. She has been called a “stupid bitch” by a supervisor.

784. She has also heard Pearson refer to black employees as, “monkeys.”

785. B. Thomas was treated differently in the terms and conditions of her employment and subjected to a hostile work environment because of her race, African-American, and her gender, female.

786. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of her employment.

787. As set out in detail above, in retaliation for the Plaintiff’s good faith opposition to racial harassment, sexual harassment, sexual discrimination and racial discrimination, the Defendant took adverse employment actions against her.

788. Plaintiff has continued to be unlawfully discriminated against based on her sex and race by Austal USA. She has continually received lower wages than less experienced Caucasian employees.

789. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial

harassment, sexual harassment, sexual discrimination, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

790. The conduct of the Defendant was so severe or pervasive as to create a racially and sexually hostile working environment for the Plaintiff.

791. Defendant knew, or should have known, of the racial discrimination, racial harassment, sexual harassment, sexual discrimination and retaliation of the Plaintiff.

792. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, sexual harassment, sexual discrimination, racial discrimination and/or retaliation of the Plaintiff.

793. The Defendant thus has violated the proscriptions against race discrimination, racial harassment, sex discrimination, sexual harassment and retaliation under Title VII and 42 U.S.C. § 1981.

794. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due her. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

795. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

796. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

797. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is her only means of securing adequate relief.

798. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

**COUNT XXIX**  
**TITLE VII AND 42 U.S.C. § 1981 VIOLATIONS AND**  
**AMERICANS WITH DISABILITIES ACT VIOLATIONS**  
**PLAINTIFF ALVIN K. CUNNINGHAM**

799. Plaintiff Alvin K. Cunningham re-re-alleges and incorporates by reference paragraphs 1 - 160 above with the same force and effect as if fully set out in specific detail hereinbelow.

800. Plaintiff A. Cunningham has not only been subjected to individualized acts, incidents and/or episodes of the hostile work environment and discriminatory animus condoned and created by Defendant, but has similarly been subjected to the

hostile work environment and discriminatory animus condoned and created by Defendant through the “totality of the circumstances” of the acts, incidents and/or episodes experienced by the other named Plaintiffs and the putative class. These acts, incidents and/or episodes are described in detail above and below. “A hostile work environment class action strikes at the pattern or practice itself, not individualized or isolated instances of racial hostility.” *National RR Passenger Corp. v. Morgan*, 536 U.S. 101, 115-118 (2002). A. Cunningham also relies on these acts, incidents and/or episodes of the other named Plaintiffs and the putative class.

801. Cunningham was hired to work for Austal on or about April 10, 2006, in the job position of Pipe Fitter and remained employed with the defendant until he was constructively discharged on or about December 12, 2006.

802. Cunningham has a pacemaker and Defendant became aware of this fact. Defendant perceived Cunningham to be disabled due to his pacemaker. Defendant refused to make reasonable accommodations in work assignments to Cunningham due to his pacemaker and due to his perceived disability.

803. Defendant discriminated against Cunningham in the terms and conditions of his employment as a result of perceiving him to be disabled and/or his disability. Defendant’s failure to accommodate plaintiff in the terms and conditions of his employment constitutes discrimination within the meaning of the ADA.

804. On or about December 12, 2006, Cunningham was constructively discharged by Defendant as a result of work assignments that were unsafe due to his pacemaker. Similarly situated white employees were not treated in the same manner as Cunningham.

805. During his employment, Cunningham was subjected to a racially hostile work environment, as delineated above and below. He was aware of racial comments made to his black co-workers.

806. Cunningham was offended by such racial comments and they materially changed the terms and conditions of his employment.

807. In addition, Cunningham was aware of racial comments and slurs that were constantly written on the bathroom walls.

808. As soon as he first saw the racial graffiti, Cunningham complained about it to a white supervisor whose name he does not now remember. Nothing was done as a result of his complaint and the racial graffiti continued to be written on the bathroom walls. This racial graffiti was highly offensive to Cunningham and some of it used the word "Nigger" in it.

809. Cunningham is also aware of Caucasian employees being allowed to use the word "Nigger" in the workplace and to wear shirts displaying the Confederate flag in the workplace.

810. Cunningham made many complaints to his supervisor about the racially hostile environment, but nothing was done to stop this improper conduct.

811. After complaining about the racially discriminatory conduct and epithets, Cunningham was retaliated against in the terms and conditions of his employment.

812. During his employment, Cunningham was denied proper training and was given lower evaluations than white employees, which resulted in him receiving lower pay raises and hourly rates than less qualified white employees. No valid reason was given for the denial of this training. However, similarly situated white employees with less seniority than Cunningham were allowed provided with the training and were given higher evaluations and higher pay raises.

813. In addition, Cunningham had approximately eight (8) years of prior work experience when he was hired and Defendant refused to give him credit for this prior experience when it established his beginning hourly rate of pay. White employees with less experience were started at higher hourly rates, and white employees were given credit for their prior work experience when establishing their beginning hourly rate of pay.

814. Cunningham was denied a promotion to a supervisor's position, which was given to a white employee (Eugene Weed).



815. Cunningham complained about not being given the opportunity to be promoted while less qualified white employees were being promoted to his white direct supervisors and to Wayne Jacobs and C. J. Neletto.

816. Cunningham complained that he was being denied the training and promotion because of his race, African-American, but no remedial actions were taken and Cunningham continued to be denied training for his job and promotional opportunities

817. After complaining about the racially discriminatory conduct and the racially hostile comments and graffiti, Cunningham was retaliated against in the terms and conditions of his employment. Cunningham was written up for being absent from work, even though he provided a doctor's excuse for the absences. Cunningham was denied training that would have allowed him to receive higher evaluations and pay increases, and he was given unsafe work assignments due to his pacemaker.

818. On or about December 12, 2006, Cunningham was constructively discharged as he could no longer tolerate the racially hostile and threatening environment to which he was subjected and the racial disparity to which he was subjected.

819. Cunningham resigned his employment with the Defendant under circumstances under which a reasonable person would have felt compelled to resign.

820. Cunningham was treated differently in the terms and conditions of his employment and subjected to a hostile work environment because of his race, African-American, and due to his perceived disability and/or disability.

821. The Defendant intentionally and maliciously discriminated against the Plaintiff in the terms, conditions and benefits of his employment.

822. As set out in detail above, in retaliation for the Plaintiff's good faith opposition to racial harassment and racial discrimination, the Defendant took adverse employment actions against him.

823. The unlawful actions of the Defendant, as set forth above, constitute a practice, pattern, custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

824. The conduct of the Defendant was so severe or pervasive as to create a racially hostile working environment for the Plaintiff.

825. Defendant knew, or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiff.

826. The Defendant failed to take any prompt and/or effective action reasonably calculated to result in the prevention and/or remedy of the racial harassment, racial discrimination and/or retaliation of the Plaintiff.

827. The Defendant thus has violated the proscriptions against race discrimination, racial harassment and retaliation under Title VII and 42 U.S.C. § 1981. Defendant also violated the proscriptions against disability discrimination under the ADA.

828. As the result of the Defendant's conduct, the Plaintiff was deprived of income and other benefits due him. Plaintiff has also suffered embarrassment, humiliation, inconvenience, and mental distress.

829. The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiff's federally protected rights.

830. Plaintiff suffered damages as a proximate result of these violations, which were caused by the Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiff's rights and/or by deliberate indifference to those violations.

831. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment, backpay, an injunction, and compensatory and punitive damages is his only means of securing adequate relief.

832. Plaintiff is suffering and will continue to suffer irreparable injury from the Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the named Plaintiffs on behalf of themselves and the class members whom they seek to represent request the following relief:

- a. Acceptance of jurisdiction of this cause;
- b. Certification of the case as a class action maintainable under Federal Rules of Civil Procedure Rule 23 (a) and (b)(2), on behalf of the proposed plaintiff class, and designation of such Plaintiffs (and appointment of such Plaintiffs as designated,) as representatives of the class defined above and their counsel of record as class counsel;
- c. A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of Title VII and 42 U.S.C. §1981;
- d. A temporary and permanent injunction against Defendant and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs, usages, racial discrimination and retaliation by such Defendant set forth herein;
- e. An Order requiring Defendant to initiate and implement programs that provide (i) equal employment opportunities for African-American employees; (ii) remedy the effect of Defendant's past and present unlawful employment practices;

and (iii) eliminate the continuing effects of the discriminatory and retaliatory practices described above;

f. An Order requiring Defendant to initiate and implement systems of assigning, training, transferring, compensating, and promoting African-American employees in a non-discriminatory manner;

g. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (e) and (f), above, which would provide for (i) the monitoring, reporting, and retaining of jurisdiction to ensure equal employment opportunity, (ii) the assurance that injunctive relief is properly implemented, and (iii) a quarterly report setting forth information relevant to the determination of the effectiveness of the programs described in (e) and (f), above;

h. An Order restoring the named Plaintiffs and the class they seek to represent to those jobs they would now be occupying but for Defendant's discriminatory practices;

i. An Order directing Defendant to adjust the wage rates and benefits for the named Plaintiffs and the class they seek to represent to the level that they would be enjoying but for such Defendant's discriminatory practices;

j. An award of back pay; front pay; lost job benefits; preferential rights to jobs, and other equitable relief for the named Plaintiffs and the class they seek to

represent;

k. An award of nominal, compensatory and punitive damages for all legal relief sought in this complaint ;

l. An award of litigation costs and expenses, including reasonable attorney's fees to the named Plaintiffs and class members;

m. Prejudgment interest; and

n. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Candis A. McGowan

Candis A. McGowan

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PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY ON ALL ISSUES TRIABLE BY A JURY.

/s/ Candis A. McGowan

**COUNSEL FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of October 2008, I served a copy of the above and foregoing upon the following attorneys by electronically filing the same with

the CM/ECF system, which will send electronic notice of same to:

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